IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: - 10.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.362 of 2006

R.Thamilarasi ... Petitioner

vs.

1. State, represented by
The Secretary to Government,
Prohibition and Excise,
Fort St. George,
Chennai 600 009.

2. The District Magistrate
and District Collector,
Vellore District,
Vellore-9. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus to call for the records in C3/D.C.15/2006 dated 16.2.2006 on the file of the second respondent herein, quash the same as illegal, direct the respondents to produce detenu Ramesh, son of Ramamurthy, now confined at Central Prison, Vellore, before Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr. M.Babu Muthu Meeran,
Addl. Public Prosecutor.

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O R D E R

P. SATHASIVAM, J.

The petitioner challenges the detention order, dated 16.02.2006, detaining her son by name Ramesh as 'Goonda' as contemplated under the Tamil Nadu Prevention

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of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. Though several grounds have been raised, Mr.R.Sankarasubbu, at the foremost, submitted that the impugned order of detention was based on stale grounds, hence, the same cannot be sustained.

4. While elaborating the above contention, learned counsel pointed out that the grounds of detention refers to two adverse cases and the ground case. The first adverse case relates to an occurrence that took place on 29.2.2000, registered in Vellore Taluk Police Station Crime No.108 of 2000 for offences under Sections 147, 148, 447, 324, 506(ii) read with Sec.149 IPC. The information further shows that the said case is pending in the court of Judicial Magistrate No.1, Vellore, in C.C. No.249 of 2000. The second adverse case relates to an occurrence, dated 06.01.2002, registered in Crime No.6 of 2002 on the file of the very same police station for offences under Sections 341, 294(b), 323 and 506 (ii) IPC. The said case is also pending trial in the Court of Judicial Magistrate No.1, Vellore, in C.C. No.163 of 2002. The occurrence in the second adverse case had taken place nearly after two years from the date of occurrence in the first adverse case. The impugned detention order was passed, based on the ground case occurrence, which is said to have taken place on 29.01.2006, ie., nearly after four years. In the said case, according to the complainant by name Raja, on 29.01.2006, in the afternoon, he went to shop to buy chocolate for his children. On the way, detenu Ramesh, who is an auto-driver, demanded money from him to meet out his expenses. When he questioned the said Ramesh, he scolded him in filthy language and kicked on the stomach. On seeing this, the neighbours intervened and separated. The complainant returned home and laid down. At about 9.45 P.M., wife of the complainant by name Kannagi, on returning home from temple, asked her husband as to what had happened, for which, he told her in detail the incident occurred in the afternoon. It further shows that when his wife asked him to go to police Station for making complaint, the detenu trespassed into their house, scolded Kannagi in filthy language and kicked the complainant. When Kannagi came to the rescue of her husband, the detenu

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pulled her, tore her blouse and also attempted to outrage her modesty.

5. The above details show that the detenu scolded the complainant, beat him, also scolded the complainant's wife and attempted to outrage her modesty. It is made clear that we are not ignoring the crime alleged to have been committed by the detenu. However, there is no material to show that the alleged incident did affect the public order or public peace. Further, as rightly pointed out by Mr.Sankarasubbu, even according to the respondents, the occurrence is said to have taken place nearly after four years from the date of occurrence in the second adverse case. It is not the case of the respondents that the detenu involved in some other crimes during the said four years period. Likewise, even the alleged offence in the second adverse case, according to the prosecution, is said to have been committed by the detenu after a period of two years from the date of occurrence in the first adverse case that took place on 29.2.2000. If we consider all these events/aspects, in the absence of any allegation as against the detenu that he involved in subversive activities between 06.01.2002 and 29.01.2006, we are satisfied that the order of detention was passed, based on stale grounds.

6. As per Section 2(f) of the Tamil Nadu Act 14 of 1982, 'goonda' means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, publishable under Chapter XVI or Chapter XVII or Chapter XXII of I.P.C.

Section 2(1)(a)(iii) makes it clear that in the case of a goonda, "acting in any manner prejudicial to the maintenance of public order" means, when he is engaged, or is making preparations for engaging in any of his activities as a goonda which affect adversely or are likely to affect adversely the maintenance of public order.

7. We have already referred to the ground case incident that is said to have taken place on 29.01.2006. The particulars available in the grounds of detention show that, at the most, the activities of the detenu would fall within the domain of law and order and that it can never be said that those acts in any way adversely affected the public order or public tranquility.

8. Though learned counsel for the petitioner and the learned Additional Public Prosecutor cited several decisions in support of their respective claims, in view of

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the factual details as referred to above, we are of the view that it is unnecessary to refer the same. From the facts discussed above, it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu habitually engaged in criminal activities and therefore a goonda. The Detaining Authority thus passed the impugned order of detention against the detenu on stale grounds without application of mind, hence, the detention order could not be sustained.

9. In these circumstances, we are satisfied that the petitioner has made out a case and that the impugned order of detention cannot stand, accordingly, the same is quashed. Consequently, the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai 600 009.
2. District Collector & District Magistrate, Vellore.
3. The Superintendent, Central Prison, Vellore.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr. R. Sankarasubbu, Advocate sr no. 29520

TEJ(CO)
NM(19.07.2006)

HCP. No.362 of 2006

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